

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1724 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALWANTLAL CHOTALAL

BACHKANIWALA

Versus

JAIPRAKASH KANCHAND ASWANI

Appearance:

MR RR MARSHALL for Petitioners

MR Arun H Mehta, Counsel for Mr AJ SHASTRI
for Respondent No. 1

MR DJ BHATT for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/01/99

ORAL JUDGEMENT

By the impugned order dated 17.11.1998, the 2nd Extra Asstt. Judge, Surat, while setting aside the order of the Trial court, passed below application Exh.5, has granted interim relief in terms of para 3(1). It appears that the respondent No.1-Jaiprakash Kanchand Aswani, a

Trustee of J K Aswani Family Trust, Proprietor of Ashoka Mills, filed a suit for injunction and declaration restraining the defendant No.1-petitioner from interfering with making furniture in shop No.C/1023 of Surat Textile Market. Along with the suit, application Exh.5 was filed praying that the defendants be restrained from interfering and from making furniture in the said shop. The defendants filed counter affidavit stating that one Hariben Balvantlal, predecessor in title of defendants No.1 to 5 had filed suit being No.530/81 for possession which culminated in a consent decree dated 10.7.1981. As per the consent decree, the tenant (present plaintiff) was given two years' time to vacate the premises i.e. he was supposed to vacate by 28.2.1983. However, the tenant did not vacate the premises, and therefore, execution petition No.61/83 was filed. However, the present plaintiff-tenant filed a suit in the Court of Small Causes being Small Civil Suit No.658/83 seeking declaration that the consent decree is null and void. It is stated that in the said Civil Suit, the execution of the decree has been stayed. It is not in dispute that the said stay is in existence even today. The trial court, in view of the consent decree held that the status of the plaintiff as tenant of the suit premises is snapped and as such he is neither contractual nor statutory tenant of the suit premises. In view of the finding, the learned Judge, by order dated 5.8.1998, rejected the application Exh.5. In appeal, the learned Judge held that in view of the injunction below Mark 6/1, the controversy as to whether the relation between the plaintiff and the defendant as landlord and tenant, has snapped or not is yet to be decided. The learned Judge, considering the fact that in the suit premises, the [plaintiff is carrying on business of selling sarees and is regularly paying rent at the rate of Rs.1800/- per month, found it to be unjust not to allow the plaintiff to put the furniture which is necessary for carrying on the business. It is to be noted that a statement was made by the learned Advocate for the plaintiff that his client would be making furniture at his own risk and cost as this installation of the furniture will be made by him without damaging the suit shop and the plaintiff will not even fix a single nail. In view of this statement, the Court found that the plaintiff should be permitted to instal new furniture instead of old one i.e. at his own risk and cost.

2. It is strenuously argued by Mr R R Marshall, learned Advocate appearing for the petitioner that the learned Judge of the Appellate Court has misconstrued the injunction granted in Civil Suit No.658/83. In the said

suit, it is only the execution of the decree which has been stayed. It is stressed that the fact remains that unless the said decree is set aside, the relation of landlord and tenant between the parties is snapped. The learned Advocate has also submitted that the Court of Small Causes has no jurisdiction to try this suit. I am afraid that all these questions cannot be gone into in an application for temporary injunction. If at an appropriate stage, a plea is raised, the same shall be decided by the Court. Suffice it to say at this stage that the plank of the plaintiff's case, the consent decree of 1981, is under cloud, being under judicial scrutiny. The plaintiff has not been able to get either the stay vacated or the suit disposed of. Thus, I do not find any illegality in the impugned order which calls for interference by this Court in exercise of powers under Section 115 of C.P.C. In view of this, the Revision Application is rejected. The court concerned is direct to decide the Small Suit No.658/83 within a period of one year from the date of receipt of the writ. Both the learned Advocates submit that they will fully cooperate with the disposal of the Small Civil Suit. This order will not have any reflection on the merit of the case. Rule discharged. Interim relief is vacated.

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msp.